IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9314 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESH MANGALBHAI PATEL

Versus

COMMISSIONER OF HIGHER EDU.

Appearance:

1. Special Civil Application No. 9314 of 2003

MS TEJAL VASHI for MR PK JANI for Petitioner No. 1

MR PRADIP BATE A.G.P. for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1,2-3

MR SUDHIR NANAVATI Ld Sr. Ad. for NANAVATI & NANAVATI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 27/04/2004

ORAL JUDGEMENT

This petition has been filed by part time

Lecturer working in Shri L.A. Shah Law College at Ahmedabad, praying that respondent no. 1 be directed to place him under the direct payment scheme pursuant to the order of this Court in Special Civil Application No.10141 of 1996, and to grant all other consequential benefits including arrears of salaries and allowances from the date the said benefits have been made available to other similarly situated persons.

2. The short facts are, that the petitioner was engaged as part time Lecturer after he obtained his law degree in the year 1977. His appointment was approved by the Gujarat University in the month of August, 1990.

2.1. It appears that previously, the non Government recognized colleges were not covered under the direct payment scheme like other colleges imparting courses in Arts, Science, Commerce, Engineering etc. The Bar Council of Gujarat, therefore, preferred petition before this Court being Special Civil Application No. 10141 of 1996, which was disposed of by the Division Bench of this Court vide order dated 16th January, 1997. Copy of the said order is annexed to this petition at annexure-C. By the said order the Division Bench of this Court had issued certain direction in light of the decision rendered by the Apex Court in the case of State of Maharashtra v. Manubhai Pragji Vashi and others reported in 1995 (2) G.L.H. at page 422. The first direction contained in clause (A) of the said order was to the effect that the -

> "Government is directed to extend the grant-in-aid scheme to all Government recognized private law colleges, on the same criteria as such grants were being given to the other faculties namely, Arts, Science, Commerce, Engineering and Medicine from the academic year 1996-97."

With the judgment of the Division Bench of this Court all the non Government law colleges of the aforesaid category stand covered under the direct payment scheme.

2.2. It also appears that several Professors working on part time basis were left out and were not extended benefit under the Scheme. They, therefore, decided to approach this Court by filing various petitions. These petitions namely Special Civil Application No. 656 of 2000 and its allied matters came to be disposed of by the learned Single Judge of this Court [Coram : Jayant Patel, J.] vide judgment dated 5th February, 2003, in

accordance with the view taken by him in Special Civil Application No. 668 of 2000 and its allied matters vide judgment dated 28th January, 2003. In all these petitions, the petitioners like the present petitioner were working on part time basis. The final direction that has been given in Special Civil Application No. 668 of 2000 by the learned Single Judge can be reproduced as under :-

"In view of the above discussion, the petitions succeed. The respondents are directed to place the petitioners in direct payment scheme w.e.f. the academic year 1996-97. The petitions are allowed to the aforesaid extent. Rule made absolute accordingly. On account of the placement in direct payment scheme, the consequential benefits including that of the arrears shall be disbursed to the petitioners within a period of three months from the date of receipt of the order of this Court. Rule made absolute accordingly. No costs. Direct Service is permitted."

Subsequently, Special Civil Application No. 656 of 2000 and its cognate matters were disposed of by the learned Single Judge on the same line, which can be gathered from the following :-

"2. There is consensus amongst the learned counsel appearing for the petitioners as well as for the respondents that all these matters are covered by the decision of this Court dated 28-1-2003 in Special Civil Application No. 663 of 2000 and Special Civil Application No. 668 of 2000.

3. In above view of the matter, I find that no elaborate discussion is required and suffice to say that all the rights and contentions of the petitioners shall be governed on the same line and at par with the petitioners of SCA No. 663/2000 and SCA No.668 of 2000 as per the decision date 28-1-2003, except so far as the petitioner of SCA No.8359/2001 since he has already been paid the arrears and, therefore, no separate benefits will be ensured to him, except the benefits as per the interim order passed earlier."

3. Ms. Tejal Vashi learned advocate appearing for Mr. P.K. Jani for the petitioner has submitted that the

petitioner has been working as part time Professor in respondent no. 3 college since the year 1977. He stands on the same footing like the other part time Professors whose petitions have already been decided by this Court in their favour. The petitioner despite the decision of this Court, has not been extended the benefit of direct payment scheme, as submitted by Ms. Vashi. According to her, this petition, therefore, deserves to be allowed and the petitioner is required to be given the benefit as prayed for in clause (A) of paragraph 15 of the petition.

3.1. Mr. Pradip Bhate learned A.G.P. appearing for respondent no. 1 and Mr. Sudhir Nanavati learned Senior Advocate for Nanavati & Nanavati for respondent no. 3 have not seriously disputed the submissions advanced by Ms. Vashi.

4. Having gone through the record of this petition, it clearly appears that the issue involved in this petition is identical and the petitioner can be placed on the same footing like the petitioners of Special Civil Application No. 656 of 2000. Since this Court has granted relief prayed for by those petitioners in aforesaid proceedings, this petition is also required to be allowed and the following directions are required to be issued :-

Respondent no. 1 is directed to place the petitioner in direct payment scheme with effect from academic year 1996-97. Respondent no. 1 is also directed to pay to the petitioner all the benefits which are permissible in law including arrears of salary if there is, as early as possible and in any case not later than 30th September, 2004.

This petition is, therefore, allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/